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ILLINOIS COMMERCE COMMISSION**

ORIGINAL

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

21st Century Telecom of Illinois, Inc.)

v.)

Illinois Bell Telephone Company d/b/a)
Ameritech Illinois)

Complaint Against Illinois Bell Telephone)
Company d/b/a Ameritech Illinois Under)
Sections 13-514 and 13-515 of the Public)
Utilities Act and Request for Emergency)
Relief Pursuant to Section 13-515(e).)

Docket No. 00-0219

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AMERITECH ILLINOIS' RESPONSE BRIEF

***PUBLIC VERSION
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AMERITECH ILLINOIS' RESPONSE BRIEF

Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois") respectfully submits its response to the Initial Brief of 21st Century Telecom of Illinois, Inc. ("21st Century"). As described herein, 21st Century's claims are not supported by the law or the facts and should be rejected.

INTRODUCTION

21st Century filed its Complaint under Sections 13-514 and 13-515 of the Public Utilities Act ("PUA"). 220 ILCS 5/12-514 and 13-515.^{1/} The two issues before the Commission are whether Ameritech Illinois has violated Section 13-514 with respect to (1) its manner and timeliness of provisioning unbundled loops to 21st Century, and (2) its provisioning of unbundled loops to 21st Century customers located in buildings with AXT doorbell answering service.

To prove a violation of Section 13-514, 21st Century must show by a preponderance of the evidence that Ameritech Illinois has engaged in conduct that is "unreasonabl[e]" and that "knowingly impede[s] the development of competition in any telecommunications service market."^{2/}

220 ILCS 5/13-514. 21st Century has not met that test for either claim.

^{1/} 21st Century's Complaint sought emergency relief, which the Commission denied. The Complaint also originally included a count regarding Ameritech Illinois' provisioning of trunk augments for interconnection with 21st Century, but 21st Century withdrew that claim after receiving Ameritech Illinois' testimony.

^{2/} 21st Century claims that Ameritech Illinois has committed a "per se" violation of Section 13-514(6), which requires proof that Ameritech Illinois is "unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers." (21st Century Init. Br. at 8) (emphasis added). Notably, 21st Century did not allege any "per se" violations of Section 13-514 in its Complaint, and it is still unclear whether the new "per se" claim applies only to the loop provisioning issue or also to the AXT issue. In any event, it is clear that there can be no violation of Section 13-514, per se or otherwise, without proof of conduct that is both unreasonable and knowingly impedes the development of competition.

1. With respect to loop provisioning, the unrefuted evidence (including Ameritech Illinois' monthly performance reports) shows that, in terms of meeting due dates, Ameritech Illinois provisions unbundled loops to 21st Century on a nondiscriminatory basis as compared to other competitive local exchange carriers ("CLECs"), Ameritech Illinois' affiliate, and (though the comparison is inapt) to retail customers purchasing bundled service. That performance is reasonable and complies with controlling law and the parties' Interconnection Agreement. Indeed, even though 21st Century would use a different method to measure Ameritech Illinois' performance in meeting due dates, 21st Century's own method shows that Ameritech Illinois does not miss due dates any more often for 21st Century than for any comparable entity. As for 21st Century's claim regarding Ameritech Illinois' alleged refusal to reschedule missed due dates, the record shows that Ameritech Illinois provisions such orders the next business day or, when necessary, coordinates with 21st Century to set a new due date.

2. With respect to providing unbundled loops to customers in buildings with AXT doorbell answering service, Ameritech Illinois has acted reasonably by cooperating with 21st Century and working through the database-related difficulties and other problems with provisioning loops to such customers and has developed formal methods and procedures just for that purpose. Furthermore, although Ameritech Illinois may not have resolved the issue as quickly as 21st Century would have liked, even 21st Century admits that this was merely the result of "mistakes" made early in the process, which Ameritech Illinois later ironed out. Ameritech Illinois' diligent, and ultimately successful, efforts to resolve an unusual provisioning difficulty that affected a limited number of customers connected to a grandfathered service simply cannot amount to a violation of Section 13-514.

In short, neither the law nor the facts supports 21st Century's claims. 21st Century's allegations concern garden variety disputes about implementation of an interconnection agreement and do not reflect any unreasonable or knowingly anticompetitive behavior that would have a "substantial adverse effect" on 21st Century's ability to serve customers or rise to the level of an "imped[iment] [to] the development of competition" as required by Section 13-514.^{3/} Accordingly, those claims should be denied.

ARGUMENT

I. AMERITECH ILLINOIS PROVISIONS UNBUNDLED LOOPS TO 21ST CENTURY IN A TIMELY AND NONDISCRIMINATORY MANNER AND HAS NOT ENGAGED IN ANY KNOWINGLY ANTICOMPETITIVE CONDUCT.

21st Century argues that Ameritech Illinois "frequently" misses due dates for provisioning unbundled loops and fails to unilaterally establish a new due date when the assigned date is missed. (Complaint ¶ 13; 21st Century Init. Brief at 5). This conduct, 21st Century contends, is discriminatory and impedes 21st Century's ability to effectively compete. (Complaint ¶¶ 13-14). As noted above, 21st Century can prevail on this claim only if it proves by a preponderance of the evidence that Ameritech Illinois' conduct was both unreasonable and knowingly impeded the development of competition. The record establishes that neither is true.

A. Ameritech Illinois Meets All Applicable Standards for Provisioning Loops in a Timely and Nondiscriminatory Manner.

^{3/} Such routine service quality disputes should be resolved through the dispute resolution procedures of the controlling interconnection agreement or, if necessary, through the usual complaint procedures under other sections of the PUA, such as Sections 10-108 and 9-250, which do not have the same exacting standards as Sections 13-514 and 13-515. Ameritech Illinois has not violated those other provisions, either, of course.

21st Century is remarkably vague about what it thinks the standard for timely and nondiscriminatory provisioning is. 21st Century asserts that “[t]he fundamental question for the Commission to resolve is how often Ameritech may fail to timely provision loops to 21st Century. The answer must be, not as often as it is currently doing.” (21st Century Init. Br. at 8). But that is no standard at all. The actual legal standard is set forth in 47 U.S.C. § 251(c)(3) and mirrored in the parties’ Interconnection Agreement, which states:

[T]he quality of an unbundled Network Element, as well as the quality of the access to such unbundled Network Element that Ameritech provides to 21st Century, shall be (i) the same for all Telecommunications Carriers requesting access to such Network Element and (ii) at least equal in quality to that which Ameritech provides to itself, its subsidiaries, Affiliates or any other person.

(Interconnection Agreement, § 9.4.1; Cate, Am. Ill. Ex. 2.0 at 7; see 47 U.S.C. § 251(c)(3)).

Ameritech Illinois’ performance reports, which are supplied to 21st Century each month, show that it meets all applicable legal standards. These reports contain specific measures for the “average installation interval” and the “due dates not met” for unbundled loops. (Cate, Am. Ill. Ex. 2.0 at 8-9). The reports show that from May^{4/} through December 1999, Ameritech Illinois met the due dates on 21st Century’s loop orders █% of the time (missing only █ of █ orders). In January 2000, Ameritech Illinois met the due dates for 21st Century █% of the time (missing only █ out of █ orders), and in February 2000 Ameritech Illinois met the due dates █% of the time (missing only █ out of █ orders). Ameritech Illinois’ preliminary records indicated that it met the March 2000 due dates █% of the time (missing only █ of █ orders). (Cate, Am. Ill. Ex. 2.0 at 8, 10 and Scheds. RJC-2 and RJC-3). These numbers demonstrate that

^{4/} 21st Century first began leasing unbundled loops in May of 1999. (Cate, Am. Ill. Ex. 2.0 at 8).

Ameritech Illinois is not “frequently” missing loop order due dates as 21st Century claims and, in fact, meets such dates in the overwhelming majority of cases. (Id.)

Ameritech Illinois’ performance reports and testimony, which 21st Century failed to show were inaccurate in any way, also establish that Ameritech Illinois treats 21st Century the same as any other CLEC, any Ameritech Illinois affiliate, and Ameritech Illinois’ retail customers, and therefore meets all possible requirements of the Interconnection Agreement and state and federal law. With respect to all CLECs, Ameritech Illinois met loop order due dates 96.3% of the time in all of 1999, 92.5% of the time in January 2000, and 93.2% of the time in February 2000. With respect to Ameritech Illinois’ affiliate, Ameritech Illinois met loop order due dates ███% of the time in all of 1999, ███% of the time, in January 2000, and ███% of the time in February 2000.^{5/} Comparing these numbers to the percentage of due dates met for 21st Century (███%, ███% and ███%, respectively), conclusively establishes that Ameritech Illinois is not discriminating against 21st Century in favor of other CLECs or any Ameritech Illinois affiliate. (Cate, Am. Ill. Ex. 2.0 at 10-11).

The percentages of due dates met for 21st Century also are as high or higher than Ameritech Illinois’ comparable on-time percentage for providing bundled service to its retail customers (even though this is not a relevant comparison under applicable law, Tr. 284-85; Ameritech Illinois’ Answer ¶ 14). Ameritech Illinois missed due dates for retail service 10.8% of the time in December 1999, 11.8% of the time in January 2000, and 10.4% of the time in February 2000. For those same time periods, the due-dates-missed percentages for 21st Century’s unbundled

^{5/} Ameritech Illinois recognizes that, in some instances, provisioning loops for its affiliate may require more difficult provisioning than that required for other customers. (Tr. 243-45).

loop orders were only █%, █% and █%, respectively. Thus, there clearly has been no favoritism toward Ameritech Illinois' retail customers, as the due dates for retail customers have, in fact, been missed more often than the due dates for 21st Century's loop orders. (Cate, Am. Ill. Ex. 2.0 at 23-24).^{6/}

B. Ameritech Illinois' Method of Calculating Met Due Dates Is Consistent with the Texas Performance Measurements Adopted in the FCC and Illinois Merger Orders.

Faced with the above facts, 21st Century takes issue with Ameritech Illinois' method of measuring due dates met. Ameritech Illinois considers a loop due date to be met when the work it is required to do is finished on or before the due date. (Cate, Am. Ill. Ex. 2.0 at 6). 21st Century, by contrast, argues that an order should not be considered complete until 21st Century is informed of the completion. (21st Century Init. Br. at 7). According to 21st Century, if Ameritech Illinois completes its work on the due date and manages to contact a 21st Century representative on that day, 21st Century considers the due date to be met; if Ameritech Illinois completes its work on the due date and leaves a voicemail with 21st Century that an order is complete, 21st Century considers the due date to be met even if the voicemail is not received by 21st Century until the next morning; if Ameritech Illinois completes its work on the due date but is unable to contact someone at 21st Century until the next day, and did not leave a voicemail on the night of the completion, 21st Century considers the due date to be missed. (Tr. 35-36). This method for calculating due dates met is both illogical and improper.

^{6/} A chart comparing Ameritech Illinois' on-time provisioning performance for 21st Century and other entities is attached to Mr. Cate's direct testimony as Schedule RJC-3 and is included as Attachment A hereto.

First, as part of the orders approving the SBC-Ameritech merger, both the FCC and ICC have required Ameritech to adopt numerous performance measures used in Texas.^{8/} Ameritech Illinois' method of calculating due dates met is consistent with — and indeed, required by — these Texas performance measures. Specifically, those measures do not include the “completion notice interval,” i.e., the interval between Ameritech Illinois' completion of its work and its notification of the completion to 21st Century, in determining due dates met. Instead, they segregate the two into separate measures: a measure of due dates met and a separate measure for notice of an order completion, called “Percent Mechanized Completions Returned Within one Day of Work Completion.” FCC Merger Order, App. C, Att. A at A-20 and A-21 (Att. B hereto); Tr. 232. The fact that the completion notice interval has its own separate measure proves that it cannot also be included when measuring due dates met; to include the completion notice interval would lead to illogical double-counting among separate performance measures.

Moreover, even though the governing law establishes that loop provisioning and retail service provisioning are not comparable, exclusion of the completion notice interval when computing due dates met is essential to create any meaningful comparison between provisioning of bundled retail service and provisioning of unbundled loops. Ameritech Illinois does not notify its retail service customers when service is installed (Tr. 126), but it does provide such notice to CLECs for unbundled loops. Thus, the only way to compare the timeliness of provisioning in the two situations on an apples-to-apples basis is to exclude the completion notice interval for unbundled loops, as Ameritech Illinois does under the Texas measures. (See Tr. 280, 282). The FCC

^{8/} Applications of Ameritech Corp. and SBC Communications, Inc., Memorandum Opinion and Order, 14 FCC Red 14712, ¶¶ 377, 379 (rel. Oct. 8, 1999) (“FCC Merger Order”) (Att. B hereto); Order, Ill. C.C. Dkt. No. 98-0555 at 228 (Sept. 23, 1999) (“Illinois Merger Order”).

confirmed that this is the proper method of comparing retail service provisioning and wholesale loop provisioning in its Bell Atlantic New York 271 order. Application by Bell Atlantic for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket 99-295, FCC 99-404, at ¶ 187 and n.591 (rel. Dec. 22, 1999) (Att. C hereto). Notably, 21st Century's witness was unaware of the requirements of the Texas performance measures or that those measures separately tracked the completion notice interval.^{9/} (Tr. 74-75).

Furthermore, even if one could consider the completion notice interval in deciding whether a due date has been met (though that is clearly improper), 21st Century's method is unfairly skewed because 21st Century measures completion by when it receives telephonic notice, which fails to take into account the electronic notice of order completion that Ameritech Illinois provides via EDI. (See Tr. 287-88). Indeed, electronic notice is the only form of notification Ameritech Illinois is required to give under the Interconnection Agreement (Sch. 9.5, § 1.8 (Am. Cross Ex. (Kitchen) No. 1)).^{10/}

Hence, when Ameritech Illinois also notifies 21st Century of order completion telephonically and via facsimile (as it does, Tr. 287-88), Ameritech Illinois is going above and beyond its legal obligations.

^{9/} 21st Century also appears to have been unaware of the statements in Ameritech Illinois' "Performance Measurement User Guide" that loop orders are considered completed when Ameritech Illinois finishes its work. (Ameritech Illinois' Opposition to Request for Emergency Relief, Att. B, Performance Measurement User Guide at page 7 of 49 ("A completion date is the date the requested work has been completed"; "A service order is considered 'installed' when the unbundled loop is in place by Ameritech."))

^{10/} 21st Century tries to split hairs on this point by arguing that EDI merely gives a "communication," not "notice." (Tr. 64). But there is no evidence that the EDI notice given to 21st Century is any different than the notice given to all other CLECs, none of whom seems to have any complaints about the nature of electronic completion notices. (See Tr. 289).

Second, although 21st Century takes issue with Ameritech Illinois' method of comparing due dates met for bundled retail service and unbundled loops (Kitchen, 21st Century Ex. 1.1 at 22), its claims ignore the law and common sense. In calculating the percentages of missed retail due dates, Ameritech Illinois included only those orders requiring "field work" for business and residential customer service and excluded retail orders for "line translations only" work. (Cate, Am. Ill. Ex. 2.0 at 24). "Line translations only" work is excluded because it is unlike any work done to provision an unbundled loop for a CLEC, in that it does not require any physical labor and can be done entirely electronically. (*Id.* at 24-25). Because "line translations only" work is totally different from the more extensive work necessary to provision unbundled loops for CLECs, including "line translations only" work in the calculations would severely distort any comparison between retail and wholesale provisioning. (*See* Cate, Am. Ill. Ex. 2.0 at 24-25; Tr. 281-83). For this reason, the Texas performance measures required by the FCC and ICC recognize that, in order to compare retail and wholesale provisioning, one must include only those retail orders that required "field work" ("FW"). *See FCC Merger Order*, App. C, Att. A at A-20; Tr. 284-85. Specifically, under those measurements, provisioning of bundled retail service may be compared to provisioning of unbundled loops only if one excludes those retail orders where no field work is required. *FCC Merger Order*, App. C, Att. A at A-20. It is again telling that 21st Century's witness was unaware of this requirement of the Texas performance measures. (Kitchen, 21st Century Ex. 1.1 at 22; Tr. 80-81).

Third, 21st Century's method of calculating due dates met fails to take into account 21st Century's unavailability to receive notification calls. Although Ameritech Illinois makes every effort to telephonically contact 21st Century immediately upon completion of its work, notification calls placed by Ameritech Illinois in the past have frequently gone unanswered by 21st

Century, particularly calls made after 4:30 p.m.^{11/} (Cate, Am. Ill. Ex. 2.0 at 13-14). Indeed, 21st Century has admitted that from 8:00 p.m. until 7:00 a.m. it has no technicians available to receive notification information or to complete 21st Century's part of the work. (Tr. at 35, 46; 21st Century Init. Br. at 7). As a result, even if an order is completed after 8:00 p.m. on the due date, 21st Century is not available to receive telephonic notice of the completion or to complete its part of the work until the morning after the order was completed by Ameritech Illinois.^{12/} Under such circumstances Ameritech Illinois considers the due date met, but 21st Century considers the due date missed even though its own unavailability is the cause.

Fourth, 21st Century's approach to determining due dates met is internally inconsistent. 21st Century claims that Ameritech Illinois should just leave a voicemail message with the completion information. (See 21st Century Init. Br. at 7). Indeed, 21st Century witness Ms. Bosques stated that if 21st Century retrieves a voicemail at 8:00 a.m. that gives information about an order completed the previous night (on the due date), the due date will be considered met, but if 21st Century receives a phone call from Ameritech Illinois at 8:00 a.m. for another order completed the previous night (on

^{11/} As Mr. Cate testified, of the thirteen orders completed in March 2000 after 4:30 p.m., there were four situations where Ameritech Illinois was unable to telephonically communicate the completion to 21st Century on the night of the completion (the due date) because no one answered the phone at the 21st Century office. (Cate, Am. Ill. Ex. 2.0 at 13-14, 22-23).

^{12/} 21st Century previously asserted that it "is available and has consistently told Ameritech that it would be available until midnight . . . to get the job done." (Bosques, 21st Century Ex. 2.0 at 6). 21st Century, however, changed this position at hearing when it admitted that it has no provisioners available to take calls or complete work from 8:00 p.m. until 7:00 a.m. (Tr. 35, 46). Thus, while 21st Century claims that its failure to receive notice from Ameritech Illinois that its work has been completed and the number needs to be ported by 21st Century leads to serious customer outages, the veracity of this argument is questionable given that 21st Century does not make itself available to receive notice and complete work between 8:00 p.m. and 7:00 a.m..

the due date), the due date would be considered missed. (Tr. 37-38). This position is illogical and improperly inflates 21st Century's count of due dates missed.

As 21st Century admits, neither 21st Century nor its customer is better off when a voicemail message is left by Ameritech Illinois. (Tr. 37-38). Under either scenario above, the customer could have been unable to receive some incoming calls from the time Ameritech Illinois completed its work the previous night until 8:00 a.m. the next morning, when a 21st Century technician finally was available. Although 21st Century attempts to shift the blame for such outages to Ameritech Illinois, 21st Century's failure to have technicians available between 8:00 p.m. and 7:00 a.m. is the true reason for any alleged outages.

21st Century also ignores the fact that Ameritech Illinois has good reasons for not leaving detailed order completion information on a voicemail. As Ameritech Illinois' Mr. Cate explained, 21st Century has never specifically asked Ameritech Illinois to leave order completion information on voicemail. (Tr. 302-03, 308). Further, in instances where Ameritech Illinois provisioners left completion information on voicemail, there were subsequent calls back and forth between the provisioners to discuss the order, regardless of any message left by Ameritech Illinois. (*Id.*) Thus, leaving a voicemail message is not the total solution that 21st Century seems to think it is.

Fifth, even if one accepted 21st Century's flawed methodology, the figures it produces show no discrimination against 21st Century. 21st Century's Ms. Bosques claimed that Ameritech Illinois missed loop dues dates 12.7%, 9.4%, and 11.4% of the time in January, February, and March of 2000, respectively. Comparing those figures to Ameritech Illinois' missed due date percentages for retail service in January and February 2000 (11.8% and 10.4%) shows that even 21st Century's inflated numbers do not reflect any discrimination in favor of retail customers. Likewise, adopting

21st Century's flawed methodology would affect the figures discussed above for all CLECs in the same manner (Cate, Am. Ill. Ex. 2.0 at 16; see Kitchen, 21st Century Ex. 1.1 at 14), so the results of using that methodology would likewise show no discrimination.

C. Ameritech Illinois Provides Proper Notice That a Due Date Is in Jeopardy and Engages in a Constant Dialogue with 21st Century Provisioners to Arrange New Due Dates When Necessary.

21st Century also alleges that Ameritech Illinois fails to provide electronic notice that a due date is in jeopardy and fails to schedule a new due date once the original due date is missed. (21st Century Init. Br. at 9). Both claims are misleading and refuted by the record.^{13/}

As Mr. Cate testified, pursuant to an agreement entered by 21st Century and Ameritech Illinois, Ameritech Illinois provides completion and potentially delayed order information to 21st Century between approximately 3:30 and 4:30 p.m. each business day. (Cate, Am. Ill. Ex. 2.0 at 20-22; Tr. 246-47, 297). Unless asked by 21st Century to postpone or reschedule the completion of its orders, Ameritech Illinois continues to work during the evening shift to try to get the order completed on the due date.^{14/} (Cate, Am. Ill. Ex. 2.0-22 at 20; Tr. 258-59). If the order is not

^{13/} With regard to jeopardy notices and rescheduling of missed orders, 21st Century alleges that Ameritech Illinois has violated the parties' Interconnection Agreement. (21st Century Init. Br. at 3; Complaint ¶ 13). These allegations are entirely irrelevant — and as a matter of law cannot be considered in this proceeding — because claims for breach of an interconnection agreement are not cognizable under Section 13-514 because they are barred by Section 13-515(b). 220 ILCS 5/13-515(b); Ameritech Illinois' Opposition to Request for Emergency Relief at 12-13. Rather, 21st Century must allege and prove a "separate independent basis" for a violation of Section 13-514, which it has failed to do. 220 ILCS 5/13-515(b) (emphasis added).

^{14/} 21st Century claims that Ameritech Illinois is not following through with its agreement to provision loops after 4:30 p.m. (21st Century Init. Br. at 5-6, 10). This argument is both a red herring and untrue. The issue here is whether Ameritech Illinois is meeting its due dates for provisioning loops to 21st Century, not whether it meets the due date by provisioning before or after 4:30 p.m. In addition, Ameritech Illinois has provisioned and continues to provision loops "after hours" as agreed with 21st Century (and as it always has done). (Cate, Am. Ill. Ex. 2.0 at

completed that day, Ameritech Illinois makes every effort to complete it the next day. (Cate, Am. Ill. Ex. 2.0 at 21; Tr. 258-59).

With respect to 21st Century's argument that Ameritech Illinois fails to automatically schedule a new due date when a date is missed (21st Century Init Br. at 9-10), 21st Century ignores the fact that there is a constant dialogue between Ameritech Illinois and 21st Century technicians concerning orders, particularly orders that have been missed and need to be rescheduled. As Mr. Cate explained:

[T]here is a constant dialogue between our technician and our local operation center and the provisioners that work for 21st Century constantly everyday all day long there is discussion back and forth. . . . they talk about orders that they expect to have on the list to be able to do tomorrow in the event that we don't get them done today. . . . The provisioners have agreements. They know each other, they talk with each other. Orders that are not completed today, they will carry over and do tomorrow or make every effort to do it tomorrow and the provisioners know that.

(Tr. 256-57). 21st Century claims that it wants the completion date for missed orders to be set for the next day. (Kitchen, 21st Century Ex. 1.1 at 15). But that is what Ameritech Illinois' technicians already do automatically unless 21st Century indicates otherwise. (Cate, Am. Ill. Ex. 2.0 at 21; Tr. 257-60). Thus, formally setting a new due date is pointless unless, for one reason or another, 21st Century desires a date other than the next business day or as soon as possible. In those cases, Ameritech Illinois expects that 21st Century want need to contact its customer to establish a new due date, rather than leaving to Ameritech Illinois the task of unilaterally setting a new date that may or may not work for 21st Century's end user. (Cate, Am. Ill. Ex. 2.0 at 21). Indeed, 21st Century was adamant that Ameritech Illinois should not directly contact 21st Century's customer to set up a new date. (Tr. 83).

20-23 and Sch. RJC-5).

D. Ameritech Illinois Has Not in Any Way “Knowingly Impeded” the Development of Competition in its Provisioning of Loops to 21st Century.

As demonstrated above, 21st Century has failed to prove that Ameritech Illinois has in any way acted “unreasonably” or treated 21st Century in a discriminatory manner. Even if one accepted 21st Century’s allegations of unreasonable or discriminatory behavior, however, there still would be no basis for a violation of Section 13-514, as Ameritech Illinois clearly has not “knowingly impede[d]” the development of competition. Ameritech Illinois has met and continues to meet 21st Century loop provisioning due dates, provides all necessary notices to 21st Century in a timely manner, and makes every effort to provision missed loop orders the day after they are due or according to whatever new date 21st Century would like..^{15/} Whether 21st Century thinks Ameritech Illinois could have done a better job in some areas or not, this performance simply cannot be deemed to violate Section 13-514.

II. AMERITECH ILLINOIS IS NOT DISCRIMINATING AGAINST 21st CENTURY OR KNOWINGLY IMPEDING COMPETITION WITH RESPECT TO CUSTOMERS RESIDING IN BUILDINGS WITH AXT SERVICE.

21st Century contends that Ameritech Illinois has discriminated against it by failing to properly provision unbundled loops to subscribers residing in buildings that receive AXT service.

^{15/} Faced with this lack of evidence, 21st Century resorts to arguing that Ameritech Illinois dragged its feet in addressing loop provisioning issues until 21st Century gave notice of its intent to file a complaint. (21st Century Init. Br. at 10). That claim is false. As Mr. Cate testified, Ameritech Illinois notified all Local Operations Center personnel of the procedures for provisioning 21st Century’s unbundled loops “after hours” on February 21, 2000 — two days before 21st Century’s February 23 letter giving notice of the possible complaint. (Cate, Am. Ill. Ex. 2.0 at 20; Ameritech Illinois’ Opposition to Request for Emergency Relief, Att. C). Further, Attachment A to Ameritech Illinois’ Opposition to Request for Emergency Relief is a February 25, 2000, e-mail from Ameritech Illinois responding to 21st Century’s February 23 letter. With respect to unbundled loops, this e-mail refers to “numerous” prior discussions with 21st Century regarding “missed FOC dates.”

21st Century's arguments are inaccurate, misleading, and in several instances, absolutely false. Moreover, there is no evidence that Ameritech Illinois has discriminated against 21st Century with regard to such loops or in any way knowingly impeded the development of competition.

AXT service, also known as Lobby Interphone Service for Multiple Apartment Buildings, is a central office-based door answering service. The service was sold to building owners and allows visitors entering the building to use a phone in the lobby to contact the apartment they want to visit. The phone rings in the apartment being contacted and the resident is able to open the lobby door by dialing in a code. (Suthers, Am. Ill. Ex. 3.0 at 3). AXT service was grandfathered on April 16, 1981. Since that date, AXT service has not been offered to any new customers. (*Id.* at 3). Ameritech Illinois is in the process of phasing out AXT service and plans to discontinue the service altogether in the near future. (*Id.* at 5).

A. The Provisioning of Unbundled Loops in AXT Buildings Posed Unique Problems for Ameritech Illinois' Recordkeeping Systems, But Ameritech Illinois Has Taken Affirmative Steps to Resolve This Issue.

When 21st Century first began ordering unbundled loops in buildings with AXT service, Ameritech Illinois did not believe that it was required to provision such loops because it thought that doing so would require it to treat AXT service as an unbundled network element ("UNE") and Ameritech Illinois was not required to offer AXT service as a UNE. (*Id.* at 8). After more closely analyzing the issue and concluding that it should provision unbundled loops to customers in buildings with AXT service, Ameritech Illinois was unsure that it was technically feasible to provision an unbundled loop to a customer in a building with AXT service without disconnecting the AXT service. Ameritech Illinois therefore worked with 21st Century's Vice President of

Telephony, Howard Kitchen, to process a test order to determine whether it was technically feasible to provision such a loop. (Id. at 13).

Ameritech Illinois also encountered administrative difficulties in provisioning unbundled loops in AXT buildings. The problems stemmed from the record keeping systems that Ameritech Illinois uses to maintain its records and to provide design assignments. Ameritech Illinois uses a database known as the Frame Operations Management System ("SWITCH/FOMS") to store all the records of all the equipment that is associated with "plain old telephone service" ("POTS") in a central office. At the time the SWITCH/FOMS database was designed, it was not known or anticipated that the loops used to provide AXT service would be subject to unbundling. For this reason, AXT service is inventoried in SWITCH/FOMS instead of the database that is used to store information regarding UNEs. (Id. at 5-6).

The database Ameritech Illinois uses for UNE information is the Trunk Inventory Record Keeping System ("TIRKS"). TIRKS contains the records of all equipment that is associated with special services in a central office. For internal recordkeeping purposes, all UNEs are considered special services and therefore are inventoried in TIRKS. When a UNE is installed for a customer, TIRKS provides the design assignments and maintains the circuit layout assignments for future use. In addition, TIRKS provides the CLEC's customer facilities assignment ("CFA") and anything needed to connect the CFA to a cable pair going out to the CLEC's subscriber. (Id. at 6).

The administrative problems with provisioning unbundled loops to customers in buildings with AXT service arose because the SWITCH/FOMS database, which maintains all the information about AXT subscribers, forwards the provisioning assignment to the Service Order

and Analysis Control ("SOAC") system. SOAC, however, cannot forward that information to TIRKS. Consequently, when the TIRKS database generates any unbundled loop assignments, it has no information regarding whether the affected subscriber also resides in a building with AXT service. Thus, the technicians processing the unbundled loop order do not know that the subscriber receives AXT service. (Id. at 6-7).

Despite these problems, Ameritech Illinois began manually processing requests for unbundled loops for buildings with AXT service beginning March 23 or March 24, 2000. (Tr. 335, 388). Although the aforementioned problems with processing such orders still existed, those problems were noticeable from Ameritech Illinois' side only and not from the customer's perspective. (Tr. 347-48). Thus, 21st Century is able and has been able to obtain unbundled loops for customers in buildings with AXT service. (Tr. 402-03).

Moreover, Ameritech Illinois has now established formal methods and procedures for the handling of such unbundled loop requests in AXT buildings. (See MBS Scheds. 6-8).^{16/} These procedures were put in place on April 4, 2000. (Id.; Suthers, Am. Ill. Ex. 3.0 at 12 MBS Sch. 7). These facts demonstrate that Ameritech Illinois has not been "dragging its feet" as 21st Init. Br. Century claims. (21st Century Brief at 16). Indeed, Ameritech has worked diligently to

^{16/} Under these procedures, CLECs will know which buildings have AXT service by consulting Ameritech Illinois' website. CLECs are also instructed how to request an unbundled loop in an AXT building. Special codes will be assigned to such orders, which will then be flagged in TIRKS to alert the provisioner of what needs to be done. A "special conditions" situation has been created for the one building (where Mr. Kitchen lives) where the AXT service and dial tone service originate in different central offices. Ameritech Illinois has held meetings with all of the groups responsible for processing unbundled loop orders in AXT buildings to ensure that each properly processes such orders. (MBS Scheds. 6-8).

solve the aforementioned problems involved in processing unbundled loop requests for customers in buildings with AXT service.^{17/}

B. Ameritech Illinois Has Not Acted Unreasonably or Discriminated Against 21st Century with Regard to the AXT Issue.

Ignoring these facts and Ameritech Illinois' efforts to resolve the issue, 21st Century makes the absurd claim that Ameritech Illinois is treating its own customers better than 21st Century's customers because Ameritech Illinois does not cancel or reject orders for bundled retail service for its own customers in buildings with AXT service. (21st Century Init. Br. at 15). First, as demonstrated above, Ameritech Illinois is not canceling or rejecting 21st Century's requests for such unbundled loops.

Second, 21st Century's attempted comparison mixes apples and oranges. 21st Century is requesting the purchase of a UNE for end-users who already have bundled retail service from Ameritech Illinois, and hence actual, physical unbundling of facilities is required. Ameritech Illinois does not unbundle anything when its own retail customers order bundled service, nor does it provide its own customers with UNEs. Therefore, no valid comparison can be made.

Third, it is undisputed that Ameritech Illinois encountered problems provisioning unbundled loops to buildings with AXT service because of the limitations of Ameritech Illinois' relevant databases. Those limitations do not exist for retail service, which do not rely on the TIRKS database.

^{17/} See also Ameritech Illinois' Opposition to Request for Emergency Relief, Att. C (e-mail of February 25, 2000 responding to 21st Century's February 23, 2000 notice letter and stating that "Ameritech has provided at least two solutions that 21st Century has rejected," noting the ongoing "testing [of] another solution with the cooperation of 21st Century," and concluding that "it is premature to put this issue into a dispute proceeding since we are currently working with your staff.")

Fourth, Ameritech Illinois has no incentive to discriminate against 21st Century with respect to loops in AXT buildings. There are approximately 325,000 households in 21st Century's service area (Tr. 85) but only 58 buildings that receive AXT service.^{18/} Thus, an exceedingly small percentage of 21st Century's potential customers are affected by the AXT problems. The time and expense Ameritech Illinois has expended to solve the problems associated with this grandfathered service — e.g., working through a field test to provision an unbundled loop to Mr. Kitchen's apartment, identifying affected buildings and posting a list on its website, developing special methods and procedures for provisioning loops in the AXT situation — far outweigh any benefit Ameritech Illinois allegedly could have hoped to gain by preventing such a small number of customers from switching to 21st Century.

C. Ameritech Illinois Has Not “Knowingly Impeded” the Development of Competition With Respect to Customers in AXT Buildings.

21st Century baldly claims, without providing any proof, that Ameritech Illinois' actions have impeded its ability to compete for customers in buildings with AXT service. 21st Century asserts that Ameritech Illinois has made “two major mistakes in dealing with the AXT issue.” (21st Century Init. Br. at 15). At the outset, Ameritech Illinois notes that making a “mistake” is insufficient to meet the threshold showing required by Section 13-514. That section prohibits a carrier from “knowingly impeded[ing] the development of competition in any telecommunications service market.” 220 ILCS 5/13-514 (emphasis added).

^{18/} In its Brief, 21st Century makes the outlandish claim that Ameritech Illinois has failed to provide it with the information identifying the buildings with AXT service. (21st Century Init. Br. at 13-14). Ameritech Illinois provided that information in a timely response to a 21st Century data request on Monday, April 10, 2000, and the information is posted on Ameritech Illinois' TCNet website. (MBS Sch. 6). Thus, 21st Century has had this information for more than a month.

Further, the “mistakes”^{19/} alleged by 21st Century completely ignore the record evidence. First, 21st Century argues that “Ameritech [Illinois] should have known . . . that not reusing the [existing] loop . . . was going to cause the 21st Century customer’s service to be disconnected.” (21st Century Init. Br. at 15). 21st Century’s argument, however, ignores the limitations with Ameritech Illinois’ database processing systems described by Mr. Suthers. (Am. Ill. Ex. 3.0 at 8). It is uncontroverted that because of the limitations of those database systems, the technicians processing an unbundled loop request had no way of knowing that they were dealing with a customer in a building with AXT service. Thus, Ameritech Illinois did not know, and cannot be charged with knowing, that not reusing the existing loop allegedly would result in an AXT service outage.

Second, although Ameritech Illinois has acknowledged that in some instances its technician unintentionally disconnected the customer’s AXT service (Suthers, Am. Ill. Ex. 3.0 at 8), there is no record evidence that Ameritech Illinois also disconnected dial tone service for any customers as a direct result of provisioning unbundled loops associated with AXT service, as 21st Century asserts.^{20/} In his rebuttal testimony, 21st Century witness Mr. Kitchen cited three “examples” of when Ameritech Illinois purportedly disconnected a customer’s dial tone service

^{19/} It is unclear from 21st Century’s Brief what it believes the two mistakes are. The Brief is only clear as to one of the purported mistakes — that not reusing the existing loop would result in a customer’s service being disconnected.

^{20/} The only instance on the record of an AXT customer having his dial tone disconnected as a result of having an unbundled loop provisioned is that of Mr. Kitchen. Mr. Kitchen lives in a building where the AXT frame is located in a different central office from the central office that provides dial tone service. (Suthers, Am. Ill Ex. 3.0 at 13-14). This complicated the provisioning of an unbundled loop to Mr. Kitchen’s apartment. The building in which Mr. Kitchen resides is the only building where the AXT service and dial tone service originate in different central offices. (Tr. 342).

as a result of provisioning an unbundled loop to that customer. As Ameritech Illinois witness Suthers demonstrated in his supplemental direct testimony, none of these examples are accurate.

The first "example" cited by 21st Century is the request associated with Purchase Order Number ("PON") 10298440. (21st Century Ex. 1.1 at 2). However, as Mr. Suthers explained, although the customer associated with this PON did temporarily lose dial tone service, it was not as a direct result of the provisioning of the unbundled loop. Instead, a series of mistakes led to the disconnection of service. (Tr. at 322-23 (full discussion of relevant PON at 315-23); MBS Sch. 1).^{21/}

The second "example" cited by 21st Century is the request associated with PON 10288938. (21st Century Ex. 1.1 at 2). However, as Mr. Suthers explained, there is no record of this customer ever losing dial tone service. (Tr. 328 (full discussion of relevant PON at 323-28); MBS Sch. 2). In fact, the customer associated with this PON never actually became a 21st Century customer, but rather remained an Ameritech Illinois customer. (Tr. 403).^{22/}

^{21/} The record demonstrates that Ameritech Illinois unintentionally disconnected the customer's voicemail service. (Tr. 321). The order then was placed in jeopardy and a hold placed on provisioning the request. (Tr. 319). 21st Century thereafter canceled the order. (Tr. 319-20). An Ameritech Illinois technician, in attempting to work the order relating to the customer's voicemail service, did not check to see that there was a hold placed on the order, and worked the order, thereby disconnecting the telephone service. This would not have happened but for the mistake arising from the voicemail being disconnected in the first place and the technician failing to check to see that a hold had been placed on the order.

^{22/} In addition, because the customer associated with that PON at all times remained an Ameritech Illinois customer, there was never any unbundled loop provisioned for that customer. Therefore, it is obvious that this PON does not reflect a situation where a customer had dial tone service disconnected as a result of the provisioning of an unbundled loop to a building with AXT service.

The third “example” is the request associated with PON 10289464. (21st Century Ex. 1.1 at 2). But this customer never lost service as a result of the provisioning of an unbundled loop. The evidence establishes that the customer associated with this PON had dial tone service after Ameritech Illinois provisioned the unbundled loop. (Tr. 329-30; MBS Sch. 3).

Therefore, none of 21st Century’s three purported instances of a customer losing service involve instances where a customer lost dial tone service as a result of Ameritech Illinois provisioning an unbundled loop to a building with AXT service. This is consistent with Mr. Suthers’s testimony that a disconnection of service would not be expected in these cases because if the technician, as a result of the limitation of Ameritech Illinois’ databases, did not know that AXT service was involved with a unbundled loop request, provisioned a new loop for the subscriber, the subscriber would receive dial tone service from that new loop. (Suthers, Am. Ill. Ex. 3.0 at 9). In any event, this discussion is largely academic because under the methods and procedures in place now, Ameritech Illinois technicians will have all of the relevant information necessary to provision an unbundled loop in a building with AXT service.

Third, Ameritech Illinois is currently provisioning unbundled loop requests for customers in buildings with AXT services and is not rejecting or canceling such orders.^{23/} The only evidence proffered by 21st Century to attempt to show that Ameritech Illinois is continuing to reject or cancel requests for unbundled loops in buildings with AXT service is the Table found in 21st Century Ex. 1.3 attached to Mr. Kitchen’s rebuttal testimony. That Table, however, is replete with inaccuracies. Moreover, the Table provides only two “examples” where Ameritech

^{23/} In fact, Mr. Kitchen admitted that Am. Ill. was not rejecting or canceling all orders for unbundled loops in buildings with AXT service. (Tr. 444).

Illinois purportedly canceled orders received after it began manually processing all unbundled loop requests for customers in AXT buildings. But these so-called examples do not establish that Ameritech Illinois has a policy to reject such orders, as 21st Century would have the Commission believe. As Mr. Suthers explained, for the first example, PON 10479453,^{24/} a new Ameritech Illinois service representative did not follow the proper processing rules and acted outside ordinary course of business. (Tr. 340; MBS Sch. 4). Therefore, while it is true that the order associated with this PON was rejected, that was an aberration from the standard manner in which other such unbundled loop orders were being handled.

The second example, PON 10497729, involved an unbundled loop order to a customer in the building in which the AXT service and the dial tone service originate in different central offices (the same building in which Mr. Kitchen lives). At the time Ameritech Illinois rejected this order, Ameritech Illinois was still wrestling with the procedures to process requests for unbundled loops in this particular building. (Tr. 342; MBS Sch. 5). As noted previously, this is the only building that has the added complication of having its AXT service and dial tone service originate in separate central offices.

21st Century further claims that Ameritech Illinois impeded competition by delaying resolution of the AXT problem and refusing to take any affirmative steps to solve the AXT problem until after the Complaint was filed. (21st Century Init. Br. at 10, 16). The record

^{24/} PON number 10479453 listed in Table 1.3 is for an unbundled loop order that 21st Century canceled on its own, apparently for reasons totally unrelated to the customer's AXT service. (Tr. 336-37). Ameritech Illinois learned from discussions with 21st Century that 21st Century was really referring to a resubmission by 21st Century of the unbundled loop request. The resubmitted unbundled loop request was given PON 162084. Thus, the information in 21st Century's Table lists inaccurate information as it does not even refer to the proper PON.

establishes that these assertions are false. As 21st Century is well aware, there were numerous discussions between Ameritech Illinois and 21st Century regarding the AXT problem over several months. (Suthers, Am. Ill. Ex. 3.0 at 13). At first, Ameritech Illinois was not certain that it was even technically feasible to provision an unbundled loop to a customer in a building with AXT service without disconnecting the AXT service. Thus, Ameritech Illinois worked with 21st Century to process a test order to determine whether an unbundled loop could be provisioned to Mr. Kitchen's apartment in a building with AXT service. (Id.) The test process began in mid-February 2000, and 21st Century did not file its Complaint until March 9, 2000. (Id. at 14). Hence, the record shows that Ameritech Illinois most certainly took affirmative steps to resolve the problem prior to the filing of the Complaint. As Mr. Suthers candidly told the Hearing Examiner, that once Ameritech Illinois determined technical feasibility, it was at all times "committed to be[] able to provision unbundled loops [to customers in buildings] with AXT service." (Tr. 396). 21st Century witness Mr. Kitchen likewise admitted that at the time of the hearing Ameritech Illinois was no longer rejecting or canceling unbundled loop orders for customers in buildings with AXT service. (Tr. 444). Indeed, Ameritech Illinois has been processing such requests since mid-March 2000. (Tr. 335, 346).

Given these facts, 21st Century has failed to establish that Ameritech Illinois "knowingly" impeded competition in any way. Indeed, 21st Century has failed to establish that Ameritech Illinois impeded competition at all, as there is no credible evidence that 21st Century actually lost existing customers or potential customers as a result of Ameritech Illinois' actions. Moreover, 21st Century was never foreclosed from providing service to customers in buildings with AXT service because at all times it had the option of serving customers in buildings with AXT service

through resale. (Tr. 379). Although resale may not be 21st Century's preferred method of providing service, it was certainly a viable option for 21st Century to entertain during that interim period if 21st Century was truly interested in providing such customers with service. 21st Century always could have converted such customers to UNE customers once the AXT problem was resolved.

CONCLUSION

For all of the reasons set forth herein, 21st Century's Complaint should be denied in full.

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Respectfully submitted,

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